

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000514

08/29/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

DOUGLAS W JANN

v.

JIMMY DANIEL HAMMACK JR.

JAY L CIULLA

PHX JUSTICE CT-WEST
REMAND DESK-LCA-CCC

MINUTE ENTRY

WEST PHOENIX JUSTICE COURT

Cit. No. #CR01-02298MI

Charge: CT 1. ISSUING BAD CHECK, CL 1 MISDEMEANOR, DOC: 05/05/00
CT 2. ISSUING BAD CHECK, CL 1 MISDEMEANOR, DOC: 05/07/00
CT 3. ISSUING BAD CHECK, CL 1 MISDEMEANOR, DOC: 05/02/00
CT 4. ISSUING BAD CHECK, CL 1 MISDEMEANOR, DOC: 05/15/00
CT 5. ISSUING BAD CHECK, CL 1 MISDEMEANOR, DOC: 05/08/00

DOB: 01/11/64

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since the time of oral argument and this Court has considered and reviewed the record of the proceedings from the West Phoenix Justice Court, and the Memoranda, and oral argument presented to the Court.

Appellant, Jimmy Daniel Hammack, was charged in West Phoenix Justice Court with five counts of Issuing a Bad Check in violation of A.R.S. Section 13-1807, all class 1

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misdemeanor offenses. The first issue raised by the Appellant is that the trial court erred in denying his request for a jury trial. Appellant argues that he is entitled to a jury trial pursuant to the United States and Arizona Constitutions.

The Federal law is not helpful in regard to this issue. The United States Constitution requires that if a crime is punishable by more than six (6) months of incarceration, it is not a petty offense and the accused must be afforded the right to a jury trial.¹

Arizona has in fact, extended the right of a jury trial much further than that guaranteed by the United States Constitution.² Arizona case law clearly establishes the right of jury trial for “serious” rather than “petty” offenses.³ In making this determination the Arizona Supreme Court in McDougall⁴, listed four factors to evaluate in determining the right to a jury trial in the State of Arizona. The first three factors are found in Rothweiler v. Superior Court⁵:

1. The length of possible incarceration;
2. Its relationship to common law crimes.
3. The moral quality of the act charged (sometimes referred to as the “moral turpitude” issue;

The fourth consideration comes from Dolny⁶ and requires that the Court evaluate whether additional serious or grave consequences might flow from the conviction.

The length of possible incarceration in this case is six (6) months imprisonment for each offense, which is the maximum possible sentence for all class one misdemeanors, and the maximum fine is \$2500.⁷ This factor is not controlling as defendants charged for other class 1 misdemeanors such as child abuse⁸ or disorderly conduct⁹ are not entitled to trials by jury.

At common law, there was no such crime as issuing a bad check. Thus, there are no common law antecedents for these crimes at issue in this case. Appellant argues that issuing a bad check is the same quality of act as theft or shoplifting. However, this Court rejects that contention because the crimes of theft and shoplifting contain other elements not common to the crime of issuing a bad check. The crime of issuing a bad check may be committed regardless of

¹ Lewis v. United States, 518 U.S. 322, 116 S.Ct. 2163, 135, L.Ed.2d 590 (1996); Blanton v. North Las Vegas, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989).

² State ex rel. McDougall v. Strohson, 190 Ariz. at 120, 945 P.2d at 1251.

³ State ex rel. Dean v. Dolny, 161 Ariz. 297, 778 P.2d 1193 (1989).

⁴ State ex rel. McDougall v. Strohson, 190 Ariz. at 124-25, 945 P.2d at 1255-56.

⁵ 100 Ariz. 37, 410 P.2d 479 (1966).

⁶ 161 Ariz. 297, 778 P.2d 1193.

⁷ A.R.S. Section 13-802(A).

⁸ Bazzanella v. Tucson City Court, 195 Ariz. 372, 988 P.2d 157 (1999).

⁹ State ex rel. Baumert v. Superior Court, 127 Ariz. 152, 618 P.2d 1079 (1980).

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whether another innocent person is deprived of property or monies. The crime occurs when a person issues or passes a check without sufficient funds on deposit. It is irrelevant for purposes of A.R.S. Section 13-1807 whether an innocent victim is deprived of property, services or goods.

An evaluation of the moral quality of the act charged requires this Court to consider whether the crimes of Issuing a Bad Check involve “moral turpitude”, or alternatively, whether additional serious or grave consequences might flow from one’s conviction.¹⁰ Acts of “moral turpitude” are those which “adversely reflect on one’s honesty, integrity, or personal values.”¹¹ Examples include indecent exposure¹², solicitation of prostitution¹³, perjury¹⁴, forgery¹⁵, and fraud.¹⁶ Misdemeanor offenses that do not involve “moral turpitude” include selling liquor to a minor¹⁷, child abuse¹⁸, animal cruelty¹⁹, disorderly conduct²⁰, and most notably, simple assault²¹ and assault designated as domestic violence.²² The court in Benitez shed some light in distinguishing offenses involving “moral turpitude” from those that lack it:²³

It may be said that each crime enumerated [those listed above lacking “moral turpitude”] implicates the offender’s personal values, but not necessarily his moral deficiencies. Moral turpitude is implicated when behavior is morally repugnant to society. It is not implicated when the offense merely involves poor judgment, lack of self-control, or disrespect for the law involving less serious crimes.

The crimes of Issuing A Bad Check certainly involve and reflect Appellant’s personal values, but they do not reflect crimes involving dishonesty, fraud or a deficiency of moral character. The instant crimes may be committed without any intent to defraud.

The second issue presented by Appellant for review concerns the sufficiency or the evidence to constitute an appropriate foundation for the admission of bank records. This issue concerns the sufficiency of the evidence as do the third and fourth issues raised by Appellant. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the

¹⁰ Benitez v. Dunevant, 198 Ariz. 90, 95, 7 P.3d 99, 104 (2000).

¹¹ State ex rel. Dean v. Dolny, 161 Ariz. at 300 n.3, 778 P.2d at 1196 n.3.

¹² City Court of Tucson v. Lee, 16 Ariz. App. 449, 494 P.2d 54 (1972).

¹³ In re Koch, 181 Ariz. 352, 890 P.2d 1137 (1995).

¹⁴ Harris v. State, 41 Ariz. 311, 17 P.2d 1098 (1933).

¹⁵ Id.

¹⁶ In re Wines, 135 Ariz. 203, 660 P.2d 454 (1983).

¹⁷ Spitz v. Municipal Court of Phoenix, 127 Ariz. 405, 621 P.2d 911, 914 (1980).

¹⁸ Bazzanella v. Tucson City Court, 195 Ariz. 372, 988 P.2d 157.

¹⁹ Campbell v. Superior Court, 186 Ariz. 526, 924 P.2d 1045 (1996).

²⁰ State ex rel. Baumert v. Superior Court, 127 Ariz. 152, 618 P.2d 1079.

²¹ Goldman v. Kautz, 111 Ariz. at 433, 531 P.2d at 1140.

²² State ex rel. McDougall v. Strohson, 190 Ariz. at 120, 945 P.2d at 1251.

²³ Benitez v. Dunevant, 198 Ariz. at 95, 7 P.3d at 104.

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evidence to determine if it would reach the same conclusion as the original trier of fact.⁶⁴ All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.⁶⁵ If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.⁶⁶ An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁶⁷ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁶⁸ The Arizona Supreme Court has explained in State v. Tison⁶⁹ that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷⁰

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

IT IS ORDERED affirming the judgment of convictions and sentences imposed.

IT IS FURTHER ORDERED remanding this matter back to the West Phoenix Justice Court for all further and future proceedings in this case.

/s/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

⁶⁴ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

⁶⁵ State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

⁶⁶ State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁶⁷ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁶⁸ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶⁹ Supra.

⁷⁰ Id. At 553, 633 P.2d at 362.